



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Approve Professional Services Agreement for Downtown Multimodal Station

MEETING DATE: March 1, 1995

PREPARED BY: Assistant City Manager

RECOMMENDED ACTION: That the City Council authorize the City Manager to execute a professional services agreement with Wilbur Smith Associates for Phase II of the Downtown Multimodal Station Project and appropriate \$283,400 in Federal Transit Assistance and Measure K funds for the project.

BACKGROUND INFORMATION: On February 1, 1995, the City Council concurred with the recommendation of the selection committee to retain the firm of Wilbur Smith Associates (WSA) to perform the next phase of the Downtown Multimodal Station project. Phase II consists of master site planning, environmental review and preliminary engineering. As indicated in that staff report, the cost in WSA's proposal was \$272,930. Since this left only \$10,000 for contingencies and there are a number of uncertainties regarding the hazardous materials investigation needed for the environmental clearance, staff worked with WSA to reduce the scope of work and cost to \$256,930. This leaves a reasonable minimum contingency amount. The agreement calls for the work to be done on a time-and-materials basis up to the maximum amount of \$256,930 and provides for the City Engineer and City Manager to approve any extra work, which will be limited to the budgeted amount.

The professional services agreement is attached; however, the exhibits detailing the work plan, schedule and cost total over thirty pages and are not included. Attached are two figures from the original proposal which show the major project tasks, the subconsultants and preliminary schedule. These are being updated to conform with the final work plan and actual starting date.

FUNDING: Federal Transit Assistance \$226,720
Measure K \$ 56,680


Jerry L. Glenn
Assistant City Manager

Prepared by Richard C. Prima, Jr., City Engineer

JLG/RCP/lm *RCP*

Attachments

cc: City Engineer
San Joaquin County Public Works, Stacey Mortensen
Wilbur Smith Associates
San Joaquin County Council of Governments

APPROVED: _____


THOMAS A. PETERSON
City Manager

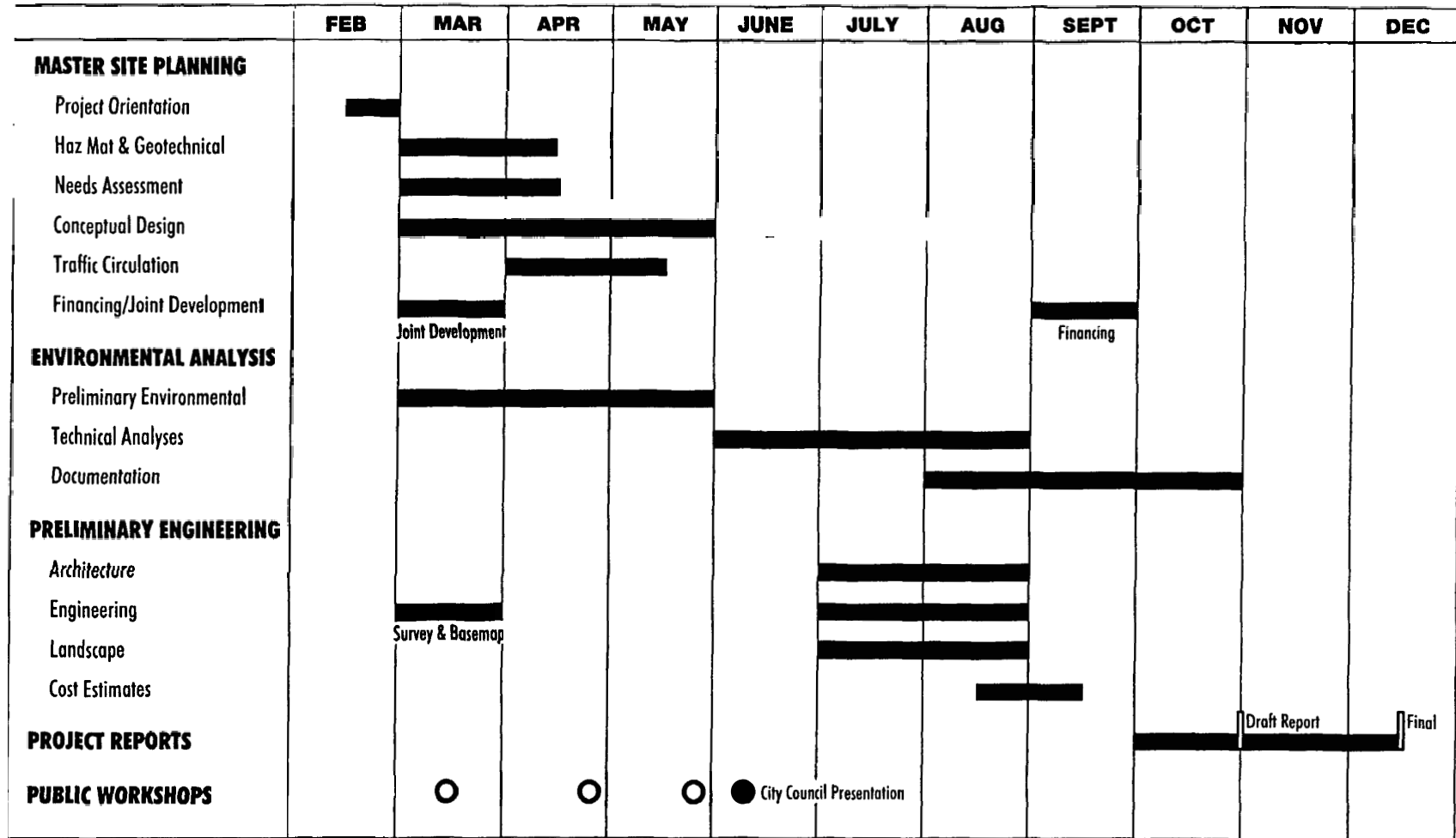


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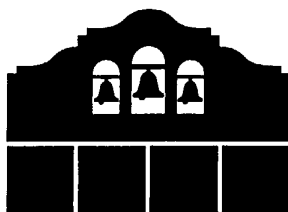


LODI RAIL/MULTIMODAL STATION - PHASE II

Figure 2
Project Schedule



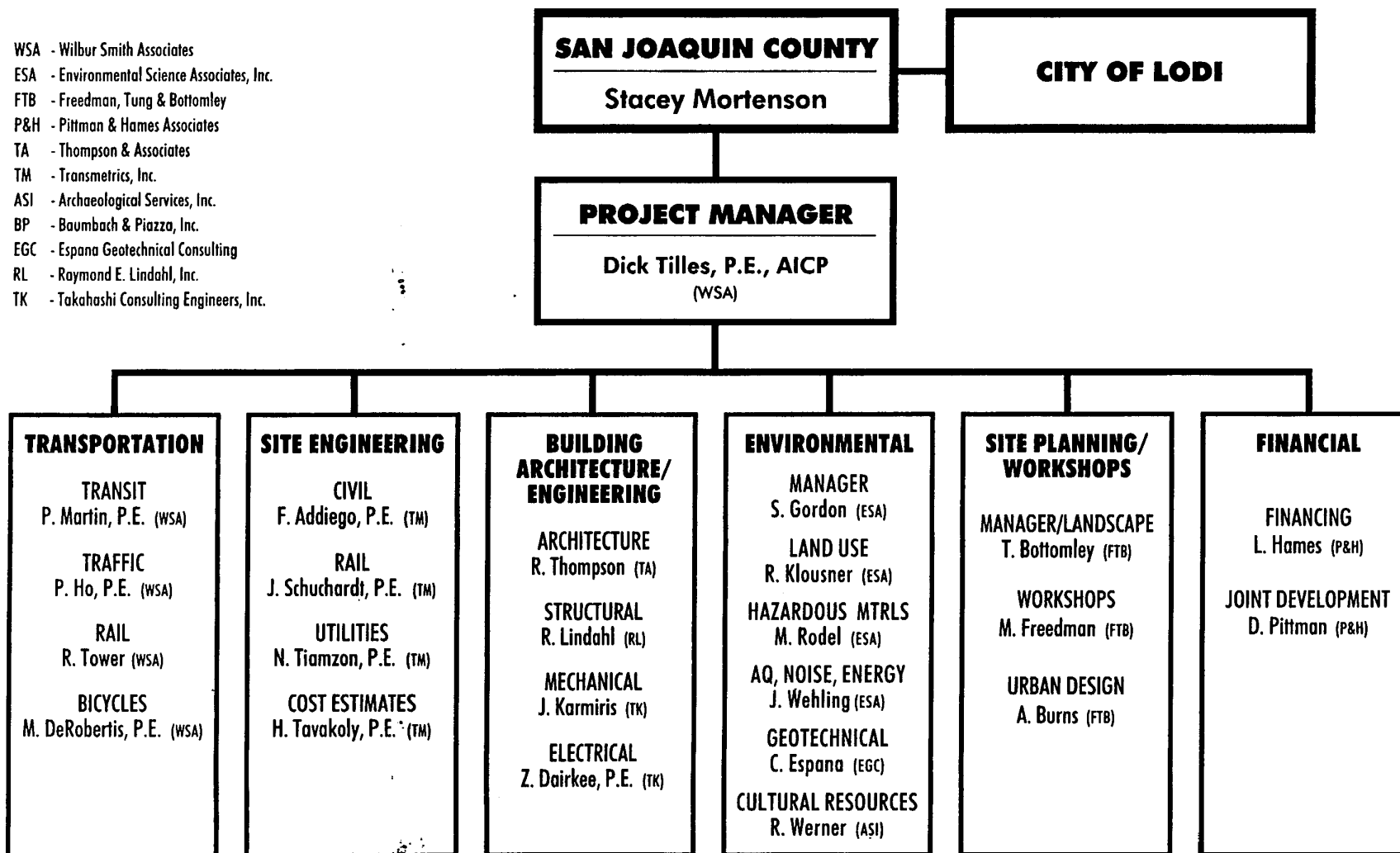
WILBUR SMITH ASSOCIATES / ENVIRONMENTAL SCIENCE ASSOCIATES, Inc. / FREEDMAN, TUNG & BOTTOMLEY / PITTMAN & HAMES ASSOCIATES / THOMPSON & ASSOCIATES / TRANSMETRICS, Inc. / ARCHAEOLOGICAL SERVICES, Inc. / BAUMBACH & PIAZZA, Inc. / ESPANA GEOTECHNICAL CONSULTING / RAYMOND E. LINDAHL, Inc. / TAKAHASHI CONSULTING ENGINEERS, Inc.



LODI RAIL/MULTIMODAL STATION - PHASE II

Figure 3
Consultant Team
Organization

- WSA - Wilbur Smith Associates
- ESA - Environmental Science Associates, Inc.
- FTB - Freedman, Tung & Bottomley
- P&H - Pittman & Hames Associates
- TA - Thompson & Associates
- TM - Transmetrics, Inc.
- ASI - Archaeological Services, Inc.
- BP - Baumbach & Piazza, Inc.
- EGC - Espana Geotechnical Consulting
- RL - Raymond E. Lindahl, Inc.
- TK - Takahashi Consulting Engineers, Inc.



WILBUR SMITH ASSOCIATES / ENVIRONMENTAL SCIENCE ASSOCIATES, Inc. / FREEDMAN, TUNG & BOTTOMLEY / PITTMAN & HAMES ASSOCIATES / THOMPSON & ASSOCIATES / TRANSMETRICS, Inc. / ARCHAEOLOGICAL SERVICES, Inc. / BAUMBACH & PIAZZA, Inc. / ESPANA GEOTECHNICAL CONSULTING / RAYMOND E. LINDAHL, Inc. / TAKAHASHI CONSULTING ENGINEERS, Inc.

PROFESSIONAL SERVICES AGREEMENT

LODI MULTIMODAL STATION

THIS AGREEMENT, made and entered into _____, by and between the CITY OF LODI, a political subdivision of the State of California, hereinafter referred to as "CITY" and Wilbur Smith Associates, hereinafter referred to as "CONSULTANT";

WITNESSETH:

WHEREAS, the CITY requires consulting services for Master Site Planning, Environmental Review and Preliminary Engineering Transportation Facilities in Lodi, hereinafter referred to as "PROJECT"; and

WHEREAS, CONSULTANT is engaged in the profession of furnishing technical and expert services for transportation planning, engineering, rail operations, urban design and environmental analysis and hereby warrants and represents that Wilbur Smith Associates are professionally capable of performing the services called for by this Agreement; and

WHEREAS, CITY has entered into a separate agreement with San Joaquin County to provide project administration hereinafter referred to as "Project Administrator"; and

WHEREAS, CITY desires to retain and employ the services of CONSULTANT to complete said PROJECT.

NOW, THEREFORE, the parties hereto mutually agree as follows

1. Scope of Work

CONSULTANT shall perform in accordance with Exhibit A, "Work Plan and Schedule", attached hereto and incorporated by reference herein. It is understood and agreed that the Consultant's Project Manager shown in Exhibit A, shall coordinate the performance of all required services under this Agreement with the Project Administrator and the City Engineer on a monthly basis or as determined by the CITY.

2. Additional Services

- a. Additional services may be required by the CITY in connection with PROJECT and with implementation of PROJECT. Said additional services shall be performed as

set forth in EXTRA WORK ORDERS which shall be authorized and issued by CITY. EXTRA WORK ORDERS will be issued as necessary and shall constitute a supplement to this Agreement.

- b. The CONSULTANT shall perform or coordinate additional services as requested by CITY only after receipt of EXTRA WORK ORDER from the CITY signed by the City Engineer and City Manager.
- c. Each EXTRA WORK ORDER shall list the scope of services to be performed, state the time within which the work is to be completed, delineate any special conditions, state the compensation in accordance with compensation terms as stated in Article 3 Compensation of this Agreement.
- d. CITY reserves the right to reduce the amount of work yet to be done in subsequent tasks in order to maintain the project budget.

3. Compensation

- a. CONSULTANT shall perform all work described in Exhibit A of this Agreement for an amount not to exceed \$256,930 dollars which shall be the total compensation paid to CONSULTANT by CITY, including all applicable surcharges such as taxes, insurance, and fringe benefits as well as indirect costs, overhead and profit allowance, materials and supplies. Compensation for additional services, as may be required, shall be as outlined in supplemental EXTRA WORK ORDERS issued for said additional services.
- b. Payment for CONSULTANT's services in each TASK shall be based on the rates and charges shown in Exhibit B, up to the maximum amount indicated for the task upon acceptance by CITY of the final copy of the deliverables described in Exhibit A. In addition to the foregoing deliverables, CONSULTANT will be required to formally report on study progress, findings and recommendations at meetings of concerned parties.
- c. CONSULTANT shall submit monthly invoices, specifying hours and expenses for each sub-consultant and person, summarized by task. The CITY will make best efforts to reimburse CONSULTANT within sixty (60) days of receipt of an acceptable invoice approved by the Project Administrator. CONSULTANT shall submit invoices in writing and in triplicate. All invoices will be delivered or mailed to the Project Administrator as follows:

San Joaquin County
Public Works Department
Attn: Stacey Mortensen
P. O. Box 1810
Stockton, CA 95201-1810

The CITY will withhold ten (10) percent of each payment. The final ten (10) percent of the total compensation for CONSULTANT work performed will be paid per Section 3 b. However, payments for the final task "Reports" will be held until the CITY makes the determination that all contract requirements have been satisfactorily fulfilled and formal approval and acceptance of the Final Report by the Lodi City Council.

- d. The CONSULTANT and CITY mutually understand that this contract may have been written before ascertaining the availability of legislative and local appropriation of funds for the mutual benefit of both parties in order to avoid program and fiscal delays that would occur if the contract were executed after the determination was made. The contract is valid and enforceable only if sufficient funds are made available to the CITY for the purpose of this PROJECT. The CONSULTANT and CITY mutually agree that if sufficient funds are not appropriated for this project, the contract shall be amended to reflect any reductions in funds. The CITY has the option to void the contract under a thirty (30) day cancellation clause or to amend the contract to reflect any reduction of funds.

4. Project Schedule

The time for performance by CONSULTANT will begin upon the issuance of a Notice to Proceed by CITY. All work described in Exhibit A shall be completed within twelve (12) months. The specified time will include reviews by the CITY. The date of completion for additional services required in Section 2 will be outlined in EXTRA WORK ORDERS for said additional services. This Project Schedule may be extended by the written consent of CONSULTANT and CITY and only in the event that such extension is necessary due to revisions in the PROJECT scope and/or schedule caused by CITY or other reviewing agency.

5. Responsibility of Consultant

- a. CONSULTANT shall be responsible for the professional and technical services rendered, recommendations made, and all required services. CONSULTANT agrees that it employs, or will employ, at its expense all personnel required in performing the services under this Agreement. There shall be no change in the CONSULTANT's Project Manager or members of the project team without the prior written approval by the Project Administrator. Such personnel shall not be employees of, or have any contractual relationship with CITY or COUNTY. The CONSULTANT shall disclose any financial, business or other relationships with the CITY that may have an impact on the outcome of this contract. Should the CONSULTANT establish or become aware of such a financial interest during the course of contract performance, they must inform the CITY in writing within ten (10) days.
- b. All of the services required by this Agreement shall be performed by CONSULTANT or sub-consultants under their direct supervision and all personnel engaged in the performance of such activities shall be fully qualified and shall be authorized or permitted under federal, state, and local law to perform such services. No discrimination shall be made by CONSULTANT in employment of persons to work under this contract because of race, color, national origin, ancestry, sex, or religion of such person.
- c. The CONSULTANT, sub-consultants and the CITY shall maintain all books, documents, papers, accounting records, and other evidence pertaining to performance of the contract, but not limited to the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract.
- d. Any dispute concerning a question of fact arising under this contract, which is not disposed of by Agreement, shall be decided by the CITY who may consider any written or verbal evidence submitted by the Consultant. The decision of the CITY, issued in writing, shall be conclusive and binding on both parties to the contract on all questions of fact considered and determined by the CITY. Neither the pendency of a dispute nor its consideration by the CITY will excuse the CONSULTANT from full and timely performance in accordance with the terms of the contract.

- e. The CONSULTANT and any sub-consultants shall permit the CITY and its designees to review and inspect the project activities at all reasonable times during the performance period of this contract including review and inspection on a daily basis.
- f. Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this contract will automatically be vested in the CITY and no further agreement will be necessary to transfer ownership to the CITY. The CONSULTANT shall furnish the CITY all necessary copies of data needed to complete the review and approval process. No material prepared in connection with the contract shall be subject to copyright in the United States or any other country.
- g. All financial, statistical, personal, technical or other data and information relative to the CITY's operations, which is designated confidential by the CITY and made available to the CONSULTANT in order to carry out this contract, shall be protected by the CONSULTANT from unauthorized use and disclosure. The CONSULTANT shall not comment publicly to the press or any other media regarding the contract, or the CITY's actions on the same, except to the CITY staff, the CONSULTANT's own personnel involved in the performance of this contract, or at public hearings, or in response to questions from a legislative committee. The CONSULTANT shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this contract without prior review and approval of the contents thereof by the CITY.
- h. CONSULTANT agrees to perform all work in compliance with applicable Federal Transit Administration regulations.

6. Indemnity

CONSULTANT agrees to defend, indemnify and hold harmless CITY, the members of its governing board, their officers, agents, and employees from and against all demands, claims, damages, losses, liability, expenses, and/or costs, including attorneys' fees and court costs arising out of CONSULTANT's negligent acts, errors or omission of services contemplated by this Agreement, except, however, for any such demands, claims, damages, losses, liabilities, expenses, and/or costs resulting from the sole and exclusive negligence of CITY and/or its prorata share of active negligence.

7. Insurance

CONSULTANT will not commence any work until he obtains, at his own expense, all required insurance. CONSULTANT shall furnish certification of insurance within fifteen (15) days after this Agreement is executed and prior to issuance of the Notice to Proceed. Such insurance must have the approval of CITY as to limit, form and amount. The types of insurance CONSULTANT is required to obtain and maintain for the full period of this Agreement will be Professional Negligence and General Liability Insurance, including contractual and automobile liability, and Worker's Compensation Insurance. As evidence of specified insurance coverage, CITY may, in lieu of actual policies, accept certificates issued by the insurance carrier showing such policies are in force for the specified period during which services will be provided by CONSULTANT. Each policy, or certificate, will bear an endorsement or statement waiving right of cancellation or reduction in coverage without thirty (30) days notice in writing to be delivered by registered mail to CITY.

a. Commercial General Liability Insurance:

CONSULTANT shall submit written evidence that he has obtained, for the period of this Agreement, full and comprehensive general liability insurance coverage, including motor vehicle insurance. This coverage will provide for both bodily injury and property damage. The bodily injury portion will include coverage for injury, sickness or disease, and death, arising directly or indirectly out of, or in connection with, the performance of work under this Agreement, and will provide for a limit of not less than \$500,000.00 for all damages arising out of bodily injury, sickness or disease, or death of one person, and a total limit of \$1,000,000.00 for damages arising out of bodily injury, sickness or disease, and death of two or more persons in any one occurrence. The property damage portion will provide for a limit of not less than \$500,000.00 for all damage arising from injury to or destruction of property of others arising directly or indirectly out of or in connection with the performance of work under the Agreement and in any one occurrence. The policies shall name CITY, its officers, agents, their employees, and representatives as additional insured.

b. Professional Liability Insurance: CONSULTANT shall also obtain professional liability insurance in the amount of \$250,000.00.

c. Worker's Compensation Insurance: CONSULTANT will submit written evidence that he has obtained, for the period of this Agreement, full Worker's Compensation

Insurance coverage for all persons whom they employ or may employ in carrying out the work under this Agreement. This insurance will be in strict accordance with the requirements of the most current and applicable State Worker's Compensation Insurance laws.

8. Termination

CITY reserves the right to terminate this Agreement at any time prior to completion by CONSULTANT of the work outlined in Exhibit A, upon ten (10) calendar days' written notice to CONSULTANT. In such event, CITY shall pay to CONSULTANT the sums then due CONSULTANT before notice is received for which payment has not been made, except that total paid shall not exceed ninety (90) percent of the cost of work performed or ninety (90) percent of the payment due CONSULTANT according to the compensation schedule given in Section 3, whichever is less. After such payment, all supporting studies, materials, plans and other documents, whether furnished or not, shall become the property of CITY and shall be immediately delivered to CITY by CONSULTANT. After all documents are received by CITY, CITY shall pay CONSULTANT the remaining ten (10) percent due CONSULTANT. Such payment upon termination shall be accepted by CONSULTANT as complete compensation of CONSULTANT for all services. CITY agrees that, if CITY substantially and materially alters any of the instruments of service, including supporting studies, materials, plans, and other documents delivered to CITY by CONSULTANT upon termination of the Contract, any use by CITY of such instrument of services for this or any other project shall be at CITY's sole risk and responsibility.

9. Assignment

Both parties shall give their personal attention to the faithful performance of this Agreement and shall not assign, transfer, convey, or otherwise dispose of this Agreement or any right, title, or interest in or to the same or any part thereof without the prior written consent of the other party and then only subject to such terms and conditions as the other party may require. A consent to one assignment shall not be deemed to be a consent to any subsequent assignments. Any assignments without such approval shall be void, and at the option of the other party, shall terminate this Agreement and any license, right or privilege granted herein. This Agreement and

interest herein shall not be assignable by operation of law without the prior written consent of the other party.

10. Modification

Unless otherwise provided herein, no changes, additions, deletions, alterations or modifications of the terms and conditions of this Agreement shall be made without written consent of both parties.

11. Waiver

In the event that either CITY or CONSULTANT shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver or any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

CITY OF LODI

CONSULTANT

Attest:

Wilbur Smith Associates

Jacqueline L. Taylor, Acting City Clerk

By _____

Title _____

Stephen J. Mann, Mayor

Approved as to form:



Bob W. McNatt, City Attorney